

TABLE OF CONTENTS

SALES, USE AND WITHHOLDING TAXES

	<u>Page</u>
Sales Tax	207
Use Tax	207
Exemptions	208
Administrative	208
Change in Due Dates	208
Filing of Returns.....	208
Amending Returns for Withholding.....	209
Electronic Fund Transfer (EFT)	209
Streamlined Sales and Use Tax Project	209
Michigan Streamlined Legislation.....	210
New Legislation.....	210
Public Act 27 of 2003.....	210
Public Act 172 and 173 of 2004.....	210
Public Act 174 of 2004.....	212
Public Act 175 of 2004.....	213
Key Court Cases	214
<i>Catalina Marketing v Department of Treasury</i>	214
<i>Birchwood Manor v Commissioner of Revenue</i>	214
Revenue Administrative Bulletins and Internal Policy Directives	214
Revenue Administrative Bulletins.....	214
Internal Policy Directives.....	215
Problem	216

SALES, USE AND WITHHOLDING TAXES

SALES TAX

The General Sales Tax Act was enacted as Public Act (PA) 167 in 1933. The tax is imposed on the seller for the privilege of making a “sale at retail” in Michigan. The tax rate has increased over the years to its current 6 percent level. Tax increases are currently restricted to authorization by amendment to the Michigan Constitution by a vote of the people.

Consumption of electricity, natural or artificial gas and home heating fuel for residential use is taxed at a rate of only 4 percent.

All sales of tangible personal property at retail in Michigan are subject to the tax unless a specific exemption applies and is claimed by the purchaser.

USE TAX

The Use Tax Act was enacted as PA 94 in 1937. Shortly after the sales tax was enacted, it became apparent that sales tax revenue was being lost by purchases of tangible personal property being made in neighboring states for consumption in Michigan. This was also recognized as a competitive disadvantage for Michigan sellers.

This tax was enacted as a tax for the privilege of storing, using or consuming tangible personal property in Michigan. The impact of this tax is felt most by remote sellers such as mail order sellers, Internet sellers and other similar direct marketers. To a limited extent, the use tax statute also supplements the sales tax statute by taxing some transactions that the sales tax does not reach.

“Use” is defined to include a transaction in which possession is given. This includes leases of tangible personal property as being subject to use tax. A lessor has the option of paying sales or use tax on the full cost of tangible personal property acquired for lease or of paying use tax on the total lease/rental receipts. However, the lessor must first be registered in order to have the option available.

Certain services are also taxed “in the same manner as tangible personal property” under the use tax act. These services are: intrastate telecommunications and similar communications, interstate telecommunications that either originate or terminate in Michigan when billed to a Michigan address, accommodations (hotel, motel, bed and breakfasts, etc.) of less than 30 continuous days, and the laundering or cleaning of textiles under a rental agreement with a term of at least 5 days.

The rate has increased along with the sales tax rate over the years until reaching its current rate of 6 percent. As with the sales tax, the use tax rate is also restricted to authorization by amendment to the Michigan Constitution by a vote of the people.

In 1999 the Department added a separate line to the Michigan income tax return to simplify the reporting and payment of this use tax liability by individuals.

EXEMPTIONS

In general, sales and use tax exemptions are based on: (1) what the item is, (2) who purchases the item, and (3) how the item is used. Frequently, a qualifying exemption from the tax will be based on a combination of these three basic exemption types.

There are currently over 100 distinct exemptions provided in the sales and use tax statutes. Generally, exemptions in one law are mirrored in the other, but there are instances when exemption is not provided for in both laws.

For persons claiming exemption, a completed and signed exemption certificate must be presented. If the exemption claim is accepted in “good faith,” the seller will not be held liable for any tax that may be due if, when audited, the sale (or purchase) is found to have been taxable.

ADMINISTRATIVE

Change in Due Dates

The due date for sales, use and withholding taxes monthly and quarterly returns is now the 20th of the month following the tax period.

The due date for accelerated sales and use taxpayers is also changed. The due date for the first 50% payment has changed from the 15th to the 20th of the current month. The second 50% payment remains due on the last day of the month. The reconciliation payment is due on the 20th of the following month.

Due dates for accelerated withholding tax filers did not change.

The early payment discount is now allowed on payments made by the 12th of the month. The discount for timely payment is allowed on payments made by the 20th of the month.

The changes were made to bring Michigan into compliance with the Streamlined Sales and Use Tax Agreement.

Filing of Returns

When a person files an Application for Registration to obtain a sales tax license or a use tax registration he or she is assigned a filing status, either monthly, quarterly or annually. It is imperative for the taxpayer to file returns based on the frequency assigned. Failure to file a return when due will result in a letter of inquiry being issued. Additional action including the issuance of an estimated tax due Intent to Assess and Final Assessment (Bill for Taxes Due) may result.

Pre-identified returns are mailed to a taxpayer when he or she becomes registered and each year thereafter. These pre-identified returns contain magnetic ink that facilitates processing of the return. It is very important that a taxpayer use the individualized (pre-identified) return for the correct filing period.

Amending Returns for Withholding

Annual returns may not be amended when the withholding on a corrected W-2 is for less than on the original W-2. These corrections must be handled between the employer and the employee or by the employee on the Michigan Income Tax Return (MI-1040). Refund requests on the annual return for this type of error will not be honored.

Electronic Fund Transfer (EFT)

Payments of sales, use, and withholding taxes can be made by EFT. Paying by EFT eliminates the need to file a paper return. Payments made by EFT must be made monthly. Once payments are transmitted electronically, monthly paper returns no longer need to be filed. The only return required is the Annual Return for Sales, Use and Withholding Taxes (form 165), due February 28 each year. Application forms for ACH Debit (form 2248) and ACH Credit (form 2328) are available on Treasury's Web site at *www.michigan.gov/biztaxpayments*.

STREAMLINED SALES AND USE TAX PROJECT

The Streamlined Sales and Use Tax Project began in March 2000. The project was established to simplify and modernize sales and use tax collection and administration. The project includes representatives from the various states including local units of government and the business community including national retailers, trade associations, manufacturers and direct marketers.

One of the primary purposes of the Streamlined Project is to encourage the voluntary collection and remittance of taxes by out-of-state vendors. Currently many out-of-state vendors who make considerable sales into a particular state lack sufficient contacts (nexus) to be required to collect taxes on those sales.

With the growth of Internet and mail order commerce, significant concern has arisen over the inability of states to mandate collection of its taxes from remote vendors. Many believe that not requiring out-of-state vendors to collect tax is unfair in that it disadvantages "brick and mortar" businesses located within the state who must collect tax. As this growth trend continues there is also concern about the fiscal consequence on state budgets due to the uncollected taxes associated with out-of-state sellers. Recent estimates indicate that in Michigan approximately \$265 million in revenues are lost annually to unpaid use taxes attributable to remote sales.

MICHIGAN STREAMLINED LEGISLATION

Following extensive discussions with business interests, the Michigan legislature enacted a package of four acts intended to comply with the Agreement. This package includes:

- Streamlined Sales and Use Tax Administration Act (PA 174 of 2004)
- Use Tax Amendments (PA 172 of 2004) and General Sales Tax Act Amendments (PA 173 of 2004)
- Streamlined Sales and Use Tax Revenue Equalization Act (PA 175 of 2004)

These four new public acts will be discussed in detail under the New Legislation heading of this text.

NEW LEGISLATION

Public Act 27 of 2003 **Effective March 30, 2004** **Use Tax Act**

This Act provides exclusion from the use tax for tangible personal property that is used solely for personal, nonbusiness purposes and that is purchased outside Michigan and brought into Michigan after 90 days by a nonresident or after 360 days by a resident. This exclusion does not apply to aircraft.

Public Act 172 of 2004 **Effective September 1, 2004** **Use Tax Act**

AND

Public Act 173 of 2004 **Effective September 1, 2004** **General Sales Tax Act**

These Acts make substantive changes to the sales and use tax provisions to bring Michigan into compliance with the Streamlined Sales Tax Project Agreement (Streamlined). The following changes were made:

Food

Prior to Streamlined, Michigan taxed “prepared food intended for immediate consumption.” Other food was exempt. The Agreement’s definition of “prepared food” differs slightly from the previous definition. This will result in a slight expansion of the exemption.

Medical Goods

Michigan law, prior to Streamlined, exempted “hearing aids, contact lenses if prescribed for a specific disease that precludes the use of eyeglasses, or any other apparatus, device, or equipment used to replace or substitute for a part of the human body, or used to assist the disabled person to lead a reasonably normal life...” Under Streamlined exemptions for these types of items may only be taken by expressing the exemptions using the terms defined in the Agreement. These terms are “durable medical equipment,” “mobility enhancing equipment” and “prosthetic device.” It is believed that expressing the exemptions utilizing these terms will, with the exception of contact lenses, slightly expand the exemption.

Sourcing of Gifts

Prior to Streamlined, Michigan law treated purchases made for gifting to a person outside of the State as made in Michigan and therefore subject to tax in Michigan. Streamlined, in accordance with the practice in the majority of other states, sources gift purchases to the destination state.

Credit for Tax on Rentals

Prior to Streamlined, Michigan law afforded an exemption from use tax on rental receipts for items purchased for rental where sales or use tax had been paid to Michigan on the purchase price. The amendments extend this credit to sales or use taxes paid on the purchase price amount to any state.

Bad Debt

Prior to Streamlined, Michigan law required that the period of limitations for taking a bad debt deduction be measured from the return due date of the period in which the sale was made. Streamlined applies a longer limitation period based on when the debt is, or could be, written off for federal income tax purposes. Streamlined also allows deduction for debts that have been sold to a third party and then re-transferred back to the seller. The general four year statute of limitations was previously applied from the return due date for the period the sale was made. Under Streamlined, the four year statute of limitations begins with the return due date for the period the debt becomes worthless and is, or could be, written off for federal income purposes.

Prescription Drugs

The Streamlined amendments codify case law decided prior to the Court of Appeals decision in *Birchwood Manor Inc. v Commissioner of Revenue*, 261 Mich App 248 (2004). After the Streamlined amendments, exemption for prescription drugs is limited to drugs for human use that can only be legally dispensed by prescription of a qualified licensed health professional. Aspirin and other over the counter medications will not be exempt from tax even if dispensed pursuant to a prescription or order of a qualified licensed health professional because they can be legally dispensed without a prescription.

Return Filing Requirement

Under Streamlined, returns are due on the 20th day of the month following the end of the filing period, rather than the 15th day.

Calculation of Tax and Reimbursement Amounts

No later than January 1, 2006 taxpayers that reimburse themselves for sales tax and taxpayers that remit use tax shall compute the tax to the third decimal place and round up to a whole cent when the third decimal place is greater than four or round down to a whole cent when the third decimal place is four or less. Beginning January 1, 2006, the current bracket system will no longer be permitted as a method for sellers to calculate sales tax that they pass on to a purchaser.

Public Act 174 of 2004

Effective July 1, 2004

Streamlined Sales and Use Tax Administration Act

This Act authorizes the State Treasurer to enter into the Agreement with other states and details the manner in which Michigan will participate. Among its provisions are those that:

- Clarify that State law controls and the Agreement does not modify State law except as the terms of the Agreement are adopted and expressed in Michigan statutes.
- Establish a State delegation consisting of four persons to represent Michigan on the Governing Board created under the Agreement.
- Provide that the State may terminate participation in the Agreement if it is determined by the State Treasurer or by joint resolution of the legislature to be in the best interests of the State.
- Authorize a system allowing for centralized registration by sellers seeking to register under the Agreement.
- Establish technological models that may be used by sellers registered under the Agreement in collecting and remitting tax under the Agreement. These models provide compliance options for registered sellers which range from hiring a service provider to undertake virtually all of a seller's responsibilities (tax calculation, collection and remittance) to authorizing a seller to retain full responsibility for its calculation, collection and remittance obligations.
- Provide for additional collection allowances to offset some of the costs of creating the technological models used under the Agreement.
- Provide for privacy protection and the use and disclosure of identifying information obtained in the administration of taxes under the Agreement.
- Establish an amnesty for a limited time period for voluntary sellers who agree to register under the Agreement and collect and remit taxes to this State.

Public Act 175 of 2004

Effective September 1, 2004

Streamlined Sales and Use Tax Revenue Equalization Act

This Act separately imposes taxes and provides credits to modify the impact of the changes made to the General Sales Tax Act and the Use Tax Act.

This Act provides a levy on interstate motor carriers for the privilege of consuming diesel fuel in the State at a cents-per-gallon rate based on a statewide average price of diesel fuel. A credit is given for 6% of the actual price of diesel purchased in the State upon which sales tax was paid. This tax was moved intact and without change from the Use Tax Act to the Equalization Act because the tax base is expressed as “cents per gallon” which deviates from the definition of “price” mandated by the Agreement for sales and use taxes. The use tax was collected on the International Fuel Tax Agreement (IFTA) return, and that collection method is retained in the Equalization Act. As a result, this “new” tax should appear as a seamless change to those affected.

The Act also provides for a tax on the privilege of storing, registering or transferring ownership of a vehicle not obtained from a dealer, an off road vehicle (ORV), manufactured housing, a snowmobile, a watercraft or certain aircraft. These items were previously taxed using a use tax base which was the greater of purchase price paid or retail dollar value at the time of acquisition. This base does not comply with the Agreement definition of “price” which is required to be used in the Use Tax Act. To retain revenue neutrality, the imposition of a tax on retail dollar value was moved to the Equalization Act. A nonrefundable credit for use tax paid on purchase price is provided and can be used to totally or partially offset the equalization tax obligation. The Department is planning for methods of administration and collection of this “new” tax that should be accomplished in a seamless manner and will be virtually transparent to consumers.

Tax is also imposed for the privilege of storing, registering or transferring ownership of a qualified aircraft that was purchased outside of the state solely for personal nonbusiness use which is subsequently brought into Michigan under certain specific circumstances. Prior to Streamlined, the tax base for these qualified aircraft was the “value of the aircraft at the time it first enters this state.” This base does not comply with the Agreement definition of “price” for sales and use taxes. To retain revenue neutrality, the imposition of a tax on the value upon entry into Michigan was moved to the Equalization Act. A credit for use tax paid on purchase price is provided and can be used to offset the equalization tax obligation or refunded.

The Act also establishes a refund provision for those hotels, motels and similar establishments that provide accommodations and pay the convention and tourism and marketing, the state convention facility development, the regional tourism marketing or the community convention and/or tourism marketing tax. These impositions were expressly exempted under the use tax prior to Streamlined. Under Streamlined, these taxes must be included in the use tax base or “price” of the services being taxed. In order to provide for the same economic consequence, persons that pay use tax calculated on these specific taxes may seek refunds of the amount of use tax paid on the specific taxes.

KEY COURT CASES

Catalina Marketing v Department of Treasury, 470 Mich 13; 678 NW 2d 619(204)

At issue in this case was the proper test to be used in distinguishing between the sale of a service and the sale of tangible personal property, and the resulting determination based on the proper test and specific facts of the case. The court determined the proper test to be used is the “incidental to service” test. It also returned the case to the Michigan Tax Tribunal to issue a decision using the incidental to service test and specific facts. The Supreme Court retained jurisdiction in this matter.

Birchwood Manor v Commissioner of Revenue, Mich App 248;680 NW 2d 504 (2004)

At issue in this case was the taxability, for sales and use taxes, of the purchase of over the counter (non-prescription) drugs purchased pursuant to a written prescription or order by a health professional. The court determined the type of drug being dispensed is not controlling and that any drug issued pursuant to a prescription is a “prescription drug” and exempt under the Michigan Constitution Article 9, Section 8.

As discussed under the Streamlined Sales Tax legislation above, Michigan sales and use tax statutes have been amended, effective September 1, 2004, to limit the exemption to only those drugs for human use that can be legally dispensed pursuant to a prescription from a qualified licensed health professional.

REVENUE ADMINISTRATIVE BULLETINS AND INTERNAL POLICY DIRECTIVES

The following publications can be found on Treasury’s Web page at www.michigan.gov/treasury.

Revenue Administrative Bulletins

Revenue Administrative Bulletin 2003-4 Flow-Through Entity Withholding Tax

This Bulletin describes the income tax withholding and reporting requirements of flow-through entities with nonresident members and business activity in Michigan.

Revenue Administrative Bulletin 2004-3
Sales and Use Tax Guidelines for Distinguishing
Between the Sale of a Service and the Sale of
Tangible Personal Property

This Bulletin announces the Department's rescission of the real object test as the proper test in distinguishing between a sale of property and a sale of a service. Pursuant to a decision of the Michigan Supreme Court (*Catalina v Treasury*) the proper test is the incidental to service test.

Internal Policy Directives

Internal Policy Directive 2003-1
Interstate Commerce Requirement of the Rolling Stock Exemption

This Directive discusses the interstate commerce component as it relates to the exemption for interstate motor carriers and rolling stock.

Internal Policy Directive 2003-2
State Chartered Credit Unions

This Directive discusses the sales and use tax imposition or exemption applicable to state chartered credit unions.

Internal Policy Directive 2003-3
General Sales and Use Tax Acts
Food Service Establishment Employee Meals

This Directive discusses the recently enacted public act that provides sales tax exemption on the sale of certain meals to employees.

PROBLEM

SALES, USE AND WITHHOLDING TAXES

Prepare a sales, use, and withholding (SUW) return and worksheet for the month of October 2004 for ADA Co. which sells and installs building material. Assume the following facts.

1. Below is a categorical breakdown of their receipts for the month of October 2004. The gross receipts shown below include sales tax whenever applicable. ADA gives its suppliers an exemption claim for all purchases, and no sales tax was paid on any of the material shown below.

		<u>Cost of Materials Used</u>	<u>Gross Receipts</u>
Contract A	This contract was with the city of Wexford, Michigan requiring ADA Co. to supply the material and erect an addition to the city hall. The city of Wexford provided a Non-Profit Exemption Claim.	\$25,000	\$100,000
Contract B -	This contract was with XXX Manufacturing, requiring ADA Co. to supply the material and erect an addition to their stamping plant. XXX provided ADA with an Industrial Processing Exemption Claim.	30,000	125,000
Contract C -	This contract required ADA to supply the material and remodel the front of the building belonging to General Appliance, a retailer of home appliances. ADA was given a Resale Exemption Claim from General Appliance.	18,000	75,000
Contract D -	ADA contracted with Wexford General Hospital to provide the material and labor for an expansion of their O.R. wing. The hospital is nonprofit, and provided ADA an exemption claim.	40,000	200,000

	<u>Cost of Materials Used</u>	<u>Gross Receipts</u>
Contract E - ADA sold building material only to Frankland Construction for Frankland's use in constructing an office building addition. Frankland provided ADA an Industrial Processing Exemption Claim.	12,000	18,000

Other miscellaneous sales of building material only:

Exemption claims obtained	\$ 20,000	\$ 30,000
No exemption claims obtained	<u>22,000</u>	<u>33,000</u>
October 2004 Totals	\$167,000	\$581,000

2. During the month ADA purchased product line brochures for \$6,000, which will be given free to customers and clients. The Indiana seller of these brochures did not charge any sales tax to ADA.
3. During the month ADA purchased scaffolding for \$2,500 from a Michigan scaffolding company. ADA did not give the seller an exemption claim for this equipment.
4. ADA paid employee wages of \$72,000 for the month and withheld \$2,500 for Michigan income tax.
5. The taxpayer pays single business tax estimates based upon 1% of gross receipts with the monthly SUW return.
6. They paid their SUW return in full on November 7, 2004.

**SALES, USE AND
WITHHOLDING TAXES
SOLUTION**

Account Number	Return Period
----------------	---------------

[illegible]

14. Enter your purchases taxable at the 6% rate 14a. _____ x .06 = 14b. _____

15.	Gross Michigan payroll and other taxable compensation for the period	15.		
16.	Michigan income tax withheld	16.		

17.	Payment due. Add lines 13, 14b and 16	17.		
18.	If filing late, enter penalty and interest (see instructions)	18.		
19.	Single Business Tax estimate (see instructions)	19.		
20.	TOTAL TAX FOR PERIOD. Add lines 17, 18 and 19	20.		
21.	Enter any credit on your account for previous overpayments	21.		
22.	TOTAL PAYMENT DUE. Subtract line 21 from line 20			
	Enter here and on the return	22.		

www.michigan.gov/treasury

Discount Payment Voucher. The voucher is a payment form only and does not replace your return. A return is still required, even if no tax is due.

Complete the form carefully and detach it. Make sure you are sending the form for the correct filing period. Make your check payable to the "State of Michigan" and write "SUW" on your check. Do not fold your check or this form. Using a #10 business envelope, mail the form and check to the address printed on the bottom of your return or voucher.

The Discount Voucher

On the first line (tax amount you are paying early), enter the amount of each tax (sales or use) you are paying early. Remember, if you are paying all your tax (even by the

7th), use the monthly/quarterly return.

On the second line (discount amount from chart), enter the amount of discount for each tax type that you computed using the charts on page 8.

On the third line (tax minus discount), subtract the discount from the amount due and enter here.

The Combined Return

Sales tax. Enter the amount from worksheet line 10B.

Sales tax discount. Enter the amount from worksheet line 11B. Be sure to include any discount you may have taken if you filed a voucher by the 7th.

Use tax (sales/rentals). Enter the amount from worksheet line 10A.

Use tax discount. Enter the amount

from worksheet line 11A. Be sure to include any discount you may have taken if you filed a voucher by the 7th.

Use tax (purchases). Enter the amount from worksheet line 14b.

Michigan withholding. Enter the amount from worksheet line 16.

SBT estimates. Enter the amount from worksheet line 19 that you are paying with this return.

Voucher payment. Enter the amount of tax paid early from the total payment line of the discount voucher. This is **not** a credit or subtotal line. Only enter an amount here if you filed a voucher by the 7th.

Penalty & interest. Enter the amount from worksheet line 18.

Total payment. Enter the amount of your check.

Michigan Dept. of Treasury - SUW
161, formerly C-3094 (Rev. 9/00)

Discount VOUCHER
for Sales and Use Taxes
Do not make changes on this form.
Use form C-3479 for all changes.

Account Number _____ Office Use **12**

Return Period _____ Due Date _____

Company Name _____

Taxpayer Signature _____ Date _____

Title _____ Phone _____

Mail to: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink.
Complete your worksheets before completing this form.

USE TAX

Use tax amount you are paying early _____

Discount amount from chart **04** _____

Use tax minus discount **03** _____

SALES TAX

Sales tax amount you are paying early _____

Discount from chart **02** _____

Sales tax minus discount **01** _____

Use this voucher only for partial payments made on or before the 7th of the month. If making a full payment, use the regular return.

Make checks payable to: State of Michigan.

Total Payment _____

00 0 000000000 0 0000 0 0

Michigan Dept. of Treasury - SUW
160, Formerly C-3200 (Rev. 9-00)

Combined RETURN
for Michigan Taxes
Do not make changes on this form.
Use form C-3479 for all changes.

Account Number _____ Office Use **22**

Return Period _____ Due Date _____

Company Name _____

Taxpayer Signature _____ Date _____

Title _____ Phone _____

Mail to: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink.

Sales Tax **01** _____

Sales Tax Discount **02** _____

Use Tax (Sales/Rentals) **03** _____

Use Tax Discount **04** _____

Use Tax (Purchases) **05** _____

Michigan Withholding **06** _____

SBT Estimates **07** _____

Voucher Payment **08** _____

Penalty & Interest **99** _____

RESERVED **97** _____

RESERVED **97** _____

RESERVED **97** _____

RESERVED **97** _____

*Enter the amount paid with a Discount Voucher. This is not a subtotal line.

Make checks payable to: State of Michigan.

Total Payment _____

00 0 000000000 0 0000 0 0

Explanation of Solution

Solution Note 1: Gross Sales

Gross sales are the receipts from the following three categories:

Contract E	\$18,000
Miscellaneous sales of building material only	
Exemption claims obtained	30,000
No exemption claims obtained	<u>33,000</u>
Total Gross Sales	\$81,000

Solution Note 2: Industrial Processing Deduction

This deduction consists of the receipts from Contract E, which is the amount charged to Frankland Construction for building material sold to them. Since ADA received a completed and signed exemption certificate from Frankland, it will exempt the sale of material to them under the “good faith” exemption provision of MCL 205.67.

Solution Note 3: Discount Computation

	<u>Tax</u>		<u>Discount Rate</u>		<u>Discount</u>	
Sales Tax Discount	\$1,868	x	.0075	x	2/3	= \$9.00

The taxpayer will use the larger of the computed discount above or \$6.00.

Solution Note 4: Purchases Subject to Use Tax

	<u>Cost</u>
Contract A	\$25,000
Contract B	30,000
Contract C	18,000
Product Line brochures	<u>6,000</u>
Total	\$79,000

A “good faith” exemption does not apply when given to a real estate contractor. As a result, ADA must pay use tax on the cost of the material used in construction contracts A, B, and C, since it is the final consumer on all materials used or consumed.

The material used in construction Contract D, however, is not subject to sales or use tax, since it will become part of a nonprofit hospital's OR wing. A real estate contractor is exempt from sales or use tax on materials used in one of the four facilities described in RAB 1999-2 Qualified Non-Profit Hospitals, Non-Profit Housing, Church Sanctuaries, and Pollution Control Facilities.

Since the product line brochures are mailed or handed out free and not resold, they are also subject to use tax.

Solution Note 5: Sales, Use, and Withholding Tax Return

The taxpayer offsets the discount against all other entries in arriving at the total. Entries on lines 2 and 4 need not be identified as negative numbers.